SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 787

TEITEL FILM CORPORATION, A CORPORATION, AND CHARLES TEITEL,

Appellants,

vs.

JOHN F. CUSACK, NER LITTNER, MARY MUELLER, HENRY RAGO AND MATTHEW SCHOENBAUM, MEMBERS OF THE MOTION PICTURE APPEAL BOARD OF THE CITY OF CHICAGO,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

Appellees in the above-entitled case move to dismiss or affirm on the ground that the question presented is so unsubstantial as not to need further argument.

OPINION BELOW.

The opinion below is set forth in Appellants' Statement, Appendix E, p. 12a. It is reported as *Cusack* v. *Teitel Film Corporation,* 38 Ill. 2d 53, 230 N. E. 2d 241 (Ill. 1967).

STATEMENT OF THE CASE.

Chapter 155 of the Municipal Code of the City of Chicago sets forth licensing procedures for motion pictures for exhibition in the City of Chicago. Chapter 155 was enacted on December 21, 1939. The principle of prior restraint as set forth in the Chicago Ordinance was approved by this Court in *Times Film Corp.* v. *City of Chicago*, 365 U. S. 43 (1960). Subsequent to *Times Film*, the Court of Appeals for the Seventh Circuit, in *Zenith International Film Corp.* v. *City of Chicago*, 291 F. 2d 785 (1961), suggested that additional procedural safeguards be added to the ordinance. These new procedures were incorporated in Chapter 155 with the creation of the Motion Picture Appeal Board on December 27, 1961.

The members of the Motion Picture Appeal Board at the time of submission of the films "Rent-A-Girl" and "Body of a Female" were the following individuals, who are the appellees herein:

Mr. John F. Cusack. Mr. Cusack is a distinguished Chicago attorney and a former actor.

Dr. Ner Littner. Dr. Littner is an internationally known child psychoanalyst.

Dr. Mary G. Mueller. Dr. Mueller was senior child psychologist for the Chicago Board of Education (Dr. Mueller died in October of 1966). Mrs. Norman H. Gerlach, President of the Chicago Drama Society, has taken Dr. Mueller's place on the Board.

Dr. Henry Rago. Dr. Rago is a professor of poetry at the University of Chicago and is the Editor of Poetry Magazine, a literary publication of international reputation.

Dr. Matthew H. Schoenbaum. Dr. Schoenbaum is Dean of the School of Social Work of Loyola University.

In *Freedman* v. *Maryland*, 380 U. S. 51 (1964), decided on March 1, 1965, this Court (a) reaffirmed its prior holding in the *Times Film* case that a governmental body may require "submission of motion pictures in advance of exhibition," (b) but added that this procedure of prior restraint "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system." (p. 58.) This decision set forth the requisite procedural safeguards as follows:

> "First, the burden of proving that the film is unprotected expression must rest on the censor." (p. 58.)
>
> "Second, while the State may require advance submission of all films, in order to proceed effectively to bar all showings of unprotected films, the requirement cannot be administered in a manner which would lend an effect of finality to the censor's determination whether a film constitutes protected expression. The teaching of our cases is that, because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint."
>
> • • • • •
>
> "Therefore, the procedure must also assure a prompt final judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." (pp. 58-59.)

This Court concluded:

> "How or whether Maryland is to incorporate the required procedural safeguards in the statutory scheme is, of course, for the State to decide." (pp. 6.)
>
> • • • • •
>
> "*We do not mean to lay down rigid time limits or procedures,* but to suggest considerations in drafting legislation to accord with local exhibition practices, and in doing so to avoid the potentially chilling effect of the Maryland statute on protected expression." (pp. 60-61.) (Emphasis added.)

In a prompt response to the *Freedman* decision, on March 24, 1965, the City Council of the City of Chicago amended the Chicago Motion Picture Ordinance, incorporating therein the *Freedman* procedural safeguard requisites. On May 26, 1965, the Circuit Court of Cook County, Illinois, in further compliance with *Freedman*, adopted General Order No. 3-3. A copy of General Order No. 3-3 is set forth as Appendix "A" to this motion.

The Films.

The two films which are the subject matter of this case are entitled "Rent-A-Girl" and "Body of a Female".

Administrative Procedures.

The following is a factual statement of the administrative timetable followed in regard to the subject films. This factual data is supported by the following record references: Illinois Supreme Court Record No. 40214, pp. 2, 3, 5-37, 57-58; Illinois Supreme Court Record No. 40215, pp. 2, 35-37, 57-58.

At the time of submission of the subject matter films, the Film Review Section of the Chicago Police Department screens all films immediately on receipt. Under the present ordinance (amended prior to the rendering of the Illinois Supreme Court Opinion), the Film Review Section must screen all films within three days of submission. (Appellants' Statement, Appendix B, p. 6a.) "Rent-A-Girl" was submitted on Friday, December 3, 1965 and screened the next working day, Monday, December 6, 1965. Appellants were notified of the disapproval of the Superintendent of Police on that same date, December 6, 1965. (Illinois Supreme Court Record 40214, p. 57.) "Body of a Female" was submitted and screened on September 2, 1965. Appellants were notified of disapproval that same date. (Illinois Supreme Court Record 40215, p. 57.)

The Chicago Ordinance requires that the applicant, if he wishes, may within seven days of rejection request in writing that the Motion Picture Appeal Board review the film.

Appellants are the applicants for licenses to show the subject films. They did not request that the Motion Picture Appeal Board review "Rent-A-Girl" until January 5, 1966. Thus 23 days' delay is directly attributable to appellants (who were permitted to submit the film to the Motion Picture Appeal Board even though the seven day period was not complied with by them). Appellants did not request that the Motion Picture Appeal Board review "Body of a Female" until February 9, 1966. Thus, 153 days' delay is directly attributable to appellants (who were permitted to submit the film to the Motion Picture Appeal Board even though the seven day period was not complied with by them).

The Motion Picture Appeal Board is required to conduct a hearing within fifteen days of the screening by the Appeal Board. In "Rent-A-Girl", the hearing was held within seven days of screening, eight days *sooner* than required by ordinance. In "Body of a Female", the hearing also was held within seven days of screening, eight days *sooner* than required by ordinance.

The applicant must be given written notice of the ruling of the Motion Picture Appeal Board within five days of the hearing date. In "Rent-A-Girl", appellants were mailed written notice the day after the hearing, four days *sooner* than required by ordinance. In "Body of a Female", appellants were mailed written notice on the same day as the hearing, five days *sooner* than required by ordinance.

The Motion Picture Appeal Board is required to file a complaint for injunction to prevent the showing of the film

within ten days of hearing. In "Rent-A-Girl", the lawsuit was filed nine days after hearing, one day *sooner* than required by ordinance. In "Body of a Female", the lawsuit was filed four days after hearing, six days *sooner* than required by ordinance.

The Illinois Supreme Court correctly noted that (Appellants' Statement, Appendix E, p. 18a; *Cusack* v. *Teitel Film Corporation*, 38 Ill. 2d 53, 62, 230 N. E. 2d 241, 247 (Ill. 1967)):

> "As far as the administrative proceedings are concerned, the ordinance itself sets forth a schedule of [a maximum of] 50 days for the total administrative reviewing of the film—from the time of inspection by the superintendent of police or Film Review Section to the filing of a suit for injunction by the board in the circuit court."

However, "Rent-A-Girl" was submitted to the Film Review Section of the Chicago Police Department on December 3, 1965, and suit was filed by the Motion Picture Appeal Board on February 9, 1966—a total of 68 days. 23 of these days are directly attributable to appellants' delay in making request for review to the Motion Picture Appeal Board. "Body of a Female" was submitted to the Film Review Section of the Chicago Police Department on September 2, 1965, and suit was filed by the Motion Picture Appeal Board on March 11, 1966—a total of 190 days. 153 of these days are directly attributable to appellants' delay in making request for review to the Motion Picture Appeal Board. In both cases were it not for delays by appellants, administrative review would have been concluded *sooner* than the maximum time limits set forth in the ordinance.

Trial Court Proceedings.

The following factual statement is supported by these record references: Illinois Supreme Court Record No. 40124, pp. 2, 9, 13, 22, 25, 58; Illinois Supreme Court Record No. 40125, pp. 2, 9, 14, 23, 58.

The applicant has 30 days after service of summons to file a responsive pleading to the Motion Picture Appeal Board injunction action. In "Rent-A-Girl", appellants were served with summons on February 21, 1966. They could have filed their respective pleading immediately. Instead, they took 25 days, until March 18, 1966, to file their Motion to Strike and Dismiss Complaint. This 25-day delay was of appellants' own volition. In "Body of a Female" appellants were served with summons on March 18, 1966. They could have filed their responsive pleading immediately. Instead, they took 27 days, until April 14, 1966, to file their Motion to Strike and Dismiss Complaint. This 27-day delay also was of appellants' own volition.

Appellants are entitled to a hearing within five days after filing their responsive pleading. In "Rent-A-Girl", appellants filed their Motion to Strike and Dismiss Complaint on March 18, 1966. Had appellants responded promptly, this hearing could have been held on or before February 26, 1966. In "Body of a Female", appellants filed their Motion to Strike and Dismiss Complaint on April 14, 1966. Again, had appellants responded promptly, this hearing could have been held on or before March 23, 1966.

In "Rent-A-Girl", appellees announced to the trial court that they were ready to proceed. However, appellants asked for a continuance to May 2, 1966. They acquiesced in a further continuance to May 17, 1966, when the *initial* hearing was held. On May 17, 1966, the complaint was stricken with leave to file an amended complaint. The

amended complaint was filed on May 27, 1966. The *appellants moved* that a hearing on their Motion to Strike and Dismiss the Amended Complaint be held on June 22, 1966. Further continuances (acquiesced in by appellants) were by order of court until August 8, 1966, when the decree appealed from herein was entered by the Circuit Court.

Again, in "Body of a Female" appellees were prepared to proceed. Appellants continued the cause to May 17, 1966, when the *initial* hearing was held. On May 17, 1966, the complaint was stricken with leave to file an amended complaint. The amended complaint was filed on May 27, 1966. The *appellants moved* that a hearing on their Motion to Strike and Dismiss the Amended Complaint be held on June 22, 1966. Further continuances (acquiesced in by appellants) were by order of court until August 8, 1966, when the decree appealed from herein was entered by the Circuit Court.

Due primarily to appellants' lack of diligence, the elapsed time from filing of suit to entry of decree in the instant causes were 180 and 150 days respectively.

Illinois Supreme Court Proceedings.

The trial court decrees enjoining the showing of both films were entered on August 8, 1966. Appellants could have filed their notices of appeal immediately. Instead, they delayed until August 24, 1966, to file their notices of appeal.

Appellants delayed until September 28, 1966, to file their records on appeal. There is no question that appellants filed their records well within the time period prescribed by the rules of the Illinois Supreme Court. However, there is also little question that they did little to accelerate the filing of these records at the earliest possible time. Both records are short (well under 100 pages each) and con-

tain no reports of proceeding or exhibits (other than those attached to the pleadings). It is apparent that these records could have been prepared in a matter of hours. Granted that it is the responsibility of the Clerk of the Circuit Court of Cook County, Illinois, to prepare the record on appeal, there is no question that the Clerk, if urged for good cause by an appellant, can and will prepare a record immediately.

The brief and abstract of appellants were filed on October 25, 1966.

The appellants argue that it was error for the Illinois Supreme Court to grant appellees, over appellants' objections, reasonable continuances to file their brief. However, as the Illinois Supreme Court noted on oral argument, significantly appellants never moved the Illinois Supreme Court to place the cause at the head of the call of that court. Moreover, when the case was taken for advisement by the Illinois Supreme Court after oral argument, appellants did not see fit to move that court for an early decision.

The foregoing chronology demonstrates the compliance of the Chicago ordinance with the *Freedman* case, the fair application of the ordinance as to the subject films and the hypocrisy of appellants' position in *arguing* "urgency", but *acting* throughout the proceedings as if no such "urgency" exists.

ARGUMENT.

I.

CHAPTER 155 OF THE MUNICIPAL CODE OF THE CITY OF CHICAGO IS CONSTITUTIONAL.

It is difficult to ascertain from appellants' Statement whether they are arguing that the Chicago ordinance is unconstitutional or that the particular application of the ordinance to the subject films is unconstitutional. Both arguments will be answered briefly.

A reading of the Chicago ordinance readily shows its compliance with *Freedman* v. *Maryland*, 380 U. S. 51 (1964). The time limits set forth in the Chicago Ordinance are reasonable ones. Films are reviewed immediately by the Film Review Section. Within fifteen days of request to the Motion Picture Appeal Board, notwithstanding demanding professional commitments, a panel of outstanding experts in the arts, psychology and psychiatry meets to review the film. This same expert group, within fifteen days of screening again, notwithstanding demanding personal commitments, convenes and affords the applicant a full hearing. Within five days of hearing the applicant is notified of the Board's decision. Within ten days of hearing, the Motion Picture Appeal Board files a detailed complaint for injunction.

Appellants have made no showing that this timetable is arbitrary or in any way unfair to them, nor have they shown that a shorter time schedule is feasible. On the contrary, they have failed to take advantage of this timetable and have themselves prolonged these administrative proceedings for periods far in excess of the time limits set forth in the ordinance.

As shown in our "Statement of the Case", any administrative and trial court delays were directly and substantially attributable to appellants. The same is true as to many of the so-called delays before the Illinois Supreme Court.

The trial court ruled on August 8, 1966. Appellants filed their briefs and abstracts on October 25, 1966. Thus, a total of 78 days were used by appellants to present this cause to the Illinois Supreme Court. This time span is well within the rules of the Illinois Supreme Court. However, the length of time taken by defendants to present these issues to the Illinois Supreme Court is (a) inconsistent with their contention that time was of the essence in these causes, and (b) shows that they themselves must share the blame for any so-called failure to seek immediate appellate review herein.

As discussed above, this Court in *Freedman* v. *Maryland*, 380 U. S. 51, 59-60 (1964), held that the manner of incorporating "the required procedural safeguards in the statutory scheme" was for the local governmental body to decide and that this Court did "not mean to lay down rigid time limits or procedures." It is submitted that Chapter 155 affords the applicant the most expeditious review possible consistent with the requirement that all the parties involved in the reviewing process be permitted to evaluate the legal issues in a professional and competent manner. Speed *in and of itself* is not the criterion. The Chicago Ordinance, unlike any similar statutory procedure existing elsewhere, provides for review by an outstanding panel of experts (the Motion Picture Appeal Board) within a reasonably prompt period of time. If the Chicago procedure is a few days longer than some others (although it is considerably shorter than the federal customs procedures approved in *United States* v. *One Carton Positive Motion Picture Film*, 367 F. 2d 889 (2nd Cir. 1966)), the applicant

is more than compensated for this minimal delay by the assurance that the film will be reviewed with impartial expertise.

Chapter 155, coupled with General Order 3-3 of the Circuit Court of Cook County, also assures that the Circuit Court will dispose of injunction proceedings (filed by the Motion Picture Appeal Board within 10 days of administrative hearing) with prompt dispatch. Delays in the Circuit Court may only occur with the conscious acquiescence of the applicant (as demonstrated by the instant causes).

In spite of the fact that they themselves did not proceed without undue delay in processing their appeals to the Illinois Supreme Court, appellants argue that the *Freedman* requirements of prompt review apply also to the appellate review of the Circuit Court injunction order.

To construe *Freedman* so liberally would be to make impossible the adoption of any statutory system of prior restraint as expressly approved by *Freedman*. For example, in the *Freedman* case itself this Court took *almost 10 months*, from date of docketing (May 8, 1964), to render the decision (on March 1, 1965)—an almost identical time period taken by the Illinois Supreme Court in these cases. Certainly, this Court in *Freedman* was not holding, as appellants apparently are urging, that *its own* reviewing procedures were unconstitutional as applied to motion picture cases. Similarly, in *United States* v. *One Carton Positive Motion Picture Film*, 367 F. 2d 889 (2nd Cir. 1966), the Court of Appeals took *eleven months* to render its decision. In any event, the City Council of the City of Chicago is as powerless to control the appellate review procedures and policies of the Illinois Supreme Court as it is to set the rules for such procedures of this Court. This reality was recognized in *Interstate Circuit, Inc.* v. *City of Dallas*, 366 F. 2d 590, 600 (5th Cir. 1966), where the Court of Appeals for the Fifth Circuit recognized that "of course,

the City of Dallas cannot compel the state courts to afford the speedy relief requested." The Court went on to hold that (p. 601):

> "So long as the [State reviewing] courts are willing to cooperate in this manner [insuring that appeals will be heard within a reasonably prompt time], *Freedman's* requirement for speedy judicial action on the merits and on review are satisfied."

The Illinois Supreme Court by limiting the time for appellants to file their brief (per the Court's order of March 16, 1967) demonstrated that it was "willing to cooperate in this manner."

Other language in the *Freedman* opinion mitigates against appellants' proposed construction requiring the governmental body to adopt statutory procedures providing for prompt review. This Court suggested in *Freedman* (380 U. S. 51, 60) that in *Kingsley Books, Inc.* v. *Brown*, 354 U. S. 436 (1957) "a model is not lacking" for a statute which sets forth "the required procedural safeguards". In *Kingsley* (which this Court decided on June 24, 1957, almost three years after the complaint for injunction was filed in the trial court), a New York statutory injunctive procedure (§ 22-a of the New York Code of Criminal Procedure (1958)) designed to prevent the sale of obscene books was upheld. Significantly, § 22-a of the New York statute makes no provision for prompt—or special—treatment of § 22-a appeals. Thus, the very statute suggested by this Court as a model for compliance with the *Freedman* procedural safeguards does not afford the prompt appellate review procedures advocated by appellants.

The common-sense reasons for refusing to adopt appellants' distorted construction of *Freedman* are many. A few of these are:

First, the very nature of the appellate process (preparing of records on appeal, filing of abstracts and formal

briefs, oral argument, consideration of the issues by several Justices) demands scholarly care, preparation and contemplation which is inconsistent with the type of "hurry-up" decision-making advocated by appellants.

Secondly, the reviewing court itself can exercise control over the case to guard against the possibility of undue delays by allowing, limiting & refusing requests for extensions of time to file briefs and abstracts (as done by the Illinois Supreme Court in the instant cause).

Finally, the rationale for prompt and special review applicable to the administrative proceeding in a case involving prior restraint is not present at the appellate level. The rationale for the *Freedman* procedural safeguards is an obvious one:

(a) The *general rule* in obscenity cases (books, magazines, photos, etc.) is that there should be no prior restraint. The obscene matter first must be distributed. Thereafter, a *criminal* trial for the *offense* of obscenity is held.

(b) Motion pictures are an *exception* to the general rule. Prior restraint (in the form of the requirement of pre-release submission of the film for licensing) in motion picture cases is legally permissible. If obscene, the motion picture is not licensed to be shown.

(c) Since the manner of testing motion pictures for obscenity is different and more restrictive (before the fact) than the manner of testing other art forms for obscenity, care at the administrative level must be taken to assure that the exercise of this formidable power of prior restraint is fair, prompt and not oppressive.

However, the basis for treating prior restraint motion picture injunction cases differently from criminal prosecu-

tions for disseminating other obscene material (*e.g.* pornographic books) is not present at the appellate level. It is a reasonable requirement that the showing of a motion picture should not be restricted unless a judge (in an injunction trial court proceeding) approves such restriction. This requirement parallels the safeguards in a criminal trial regarding other obscene materials where the trial judge makes the determination of whether or not the material is obscene. But once the trial judge, in a prior restraint proceeding, rules that the film is obscene, the distributor of the film is in the same economic position and is at the same procedural stage in adjudicating the issue of obscenity, as is the distributor of books who has been convicted of obscenity in the trial court. That is, in both instances the trial court has ruled that the material—in one instance a book, in the other a movie—is obscene. And in both instances the distributor may not disseminate his material pending appellate review. There is no constitutonal or policy reason to differentiate betwen the manner of appellate review for each of these trial court judgments of obscenity. At this procedural stage, an enjoined distributor of obscene movies is placed in no more vulnerable position than a convicted distributor of obscene books. Both must cease operations pending appellate review. Therefore, the distributor of obscene movies should be entitled to no faster—or different—appeal procedure from the trial court determination of obscenity than that afforded to the distributor of obscene books. For this reason the *Freedman* procedural safeguard rules are not applicable, nor should they be made applicable, to the appellate procedure of movie injunction cases.

The Illinois Supreme Court examined both the Chicago Ordinance and its application to the instant films in minute detail. It concluded "that the administration of the Chicago Motion Picture Ordinance violates no con-

stitutional rights of the defendants [appellants]" (Appellants' Statement, Appendix E, p. 19a, *Cusack* v. *Teitel Film Corporation*, 38 Ill. 2d 53, 63, 230 N. E. 2d 241, 247 (Ill. 1967). The Illinois Supreme Court added (Appellants' Statement, Appendix E, p. 21a, *Cusack* v. *Teitel Film Corporation*, 38 Ill. 2d 53, 64-65, 230 N. E. 2d 241, 248 (Ill. 1967)):

> "The restraint contemplated by the ordinance is to assure a submitted film of obtaining careful consideration in the light of contemporary community standards relating to obscenity. Moreover, although we recognize that delay may result from failure to follow the procedures set out by the ordinance, we found nothing in the ordinance itself which would preclude a reasonably prompt judicial determination of whether a particular film is constitutionally protected. In fact general order No. 3-3 of the Circuit Court of Cook County, cited earlier in this opinion, specifically, provides that a hearing shall be held within 5 days after the defendant answers the plaintiff's complaint, or if the defendant does not answer within 5 days after the last day allowed for the filing of an answer. We conclude that the ordinance, together with the general order, provides sufficient safeguards to assure an exhibitor of a prompt judicial hearing within the meaning of *Freedman* and thus, protects his rights to due process, and free expression."

For the foregoing reasons it is submitted that the Chicago Ordinance (a) is constitutional, and (b) was applied in a constitutional manner herein.

II.

THE FILMS ARE OBSCENE.

The instant films were viewed and found to be obscene by:

(1) the Film Review Section of the Chicago Police Department,
(2) The Motion Picture Appeal Board of the City of Chicago,
(3) The Circuit Court of Cook County, Illinois, and
(4) the Supreme Court of Illinois.

The Illinois Supreme Court Opinion (Appellants' Statement, Appendix E, pp. 26a-27a; *Cusack Teitel Film Corporation*, 38 Ill. 2d 53, 70-71, 230 N. E. 2d 241, 251-252 (Ill. 1967)) described the films as follows:

"'Rent-A-Girl', the film sought to be enjoined in case No. 40214, is described by the defendants as a documentary. The opening scene of this film shows a rather distraught but attractive young woman sitting in what is apparently the office of a District Attorney. We learn that she has recently undergone a frightening experience in associating with a brother and sister team that specializes in providing young women to satisfy the perverted needs of sexual deviates, and has decided to cooperate with the authorities in order to 'stop this sort of thing.' The District Attorney then asked her to relate her experience and through a series of flashbacks, the audience views, in scene after scene, episodes involving lesbianism, flagellation, sadism, voyeurism and group orgies, as well as the more conventional, if less imaginative heterosexual activities. The heroine realizes the error of her ways in the final scenes of the movie when she attends an orgy where she is forced to partially disrobe before the assemblage and allow her-

self to be marked with a hot branding iron on her thigh. Seeking relief from the pain she manages to crawl into a bathroom where she discovers the mutilated corpse of a woman whom we have seen whipped to death a short time before."

"Case No. 40215 involves the movie 'Body of a Female.' In this film a young man, hereafter referred to as 'X', has been attracted to a woman he has seen performing in a strip tease show. Desiring to become better acquainted, he seeks a man we shall call 'Y' to bring her to X's mansion in the country. Y then proceeds to kidnap the woman from her apartment while she is taking a bath and drives to X's mansion where she is offered a sum of money if she will remain with X for a few days. Although she agrees to this, she is not aware that X is a sadist who derives his sexual pleasure from flagellating and otherwise maiming women. Y, however, learns of X's sadistic traits and returns to the mansion to rescue the young woman. Before Y can arrive on the scene, X manages to disrobe and whip his victim and just as he is about to replace the whip with a knife, Y breaks into the room and flees with the woman. The remainder of the film concerns X's attempts to find both Y and the woman in New York City. The search is interrupted occasionally by scenes in which X is taking photograhic shots of different girls in various stages of undress. Another interruption occurs when he flogs a masseuse whom he has partially disrobed by force. When he finally manages to locate the couple, a fight ensues, X is left lying on a beach, and Y and the woman go off presumably to live happily ever after."

The Illinois Supreme Court rejected appellants' argument that the films, although dealing with matters of sex, are not obscene. That Court held (Appellants' Statement, Appendix E, pp. 27a-28a, *Cusack* v. *Teitel Film Corporation*, 38 Ill. 2d 53, 72, 230 N. E. 2d 241, 252 (Ill. 1967)):

"We are not impressed with this argument. Contrary to the defendants' assertions, our examination of these films shows that they deal not merely with sex, but with sexual deviations which can only appeal to those with a shameful and morbid interest in nudity and sex. The suggestive titles alone indicate the nature of the films and indeed the producers have apparently spared no effort to see that the spectator searching for the erotic is not disappointed."

"Both films clearly go beyond the customary limits of candor in this country. The use of the District Attorney in 'Rent-A-Girl' is a ludicrous attempt to make it appear as though the film is directed to a discussion of a social and legal problem. As such it fails. The film is nothing more than a vehicle for portraying one abnormal sexual episode after another. Although 'Body of a Female' makes no such attempt to present an aura of respectability, its flagellation scenes can appeal only to the prurient interest. On the basis of *Roth* and subsequent Supreme Court cases, and having applied the standards established therein, we find both films to be obscene and therefore beyond the protection of either the first amendment to the United States Constitution or section 4 of article II of the Illinois Constitution."

The subject films are part of the record herein (as exhibits to the amended complaints). Appellants state that these films are not obscene, but fail to show wherein the contrary opinion of every administrative and judicial body that has viewed the films is erroneous. We respectfully invite this Court to view these films (as was done in the State courts). We are confident that this Court will agree that these films are obscene.

CONCLUSION.

For the aforementioned reasons, appellees pray that their motion to dismiss or affirm the above-entitled cause on the ground that the question presented is so unsubstantial as not to need further argument be allowed.

Dated at Chicago, Illinois: November 27, 1967.

Respectfully submitted,

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APPENDIX "A".

GENERAL ORDER 3-3 OF THE CIRCUIT COURT OF COOK COUNTY.

General Order 3-3 provides that a hearing on an injunction pursuant to Chapter 155 be held within five days after the filing of a responsive pleading.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS.

GENERAL ORDER No. 3-3

SUBJECT: Motion Picture Injunctions.

IT IS HEREBY ORDERED that:

Any complaint for injunction filed pursuant to Section 155-7.2 of the Municipal Code of Chicago, or similar provision of an Ordinance of any other municipality, shall be placed at the head of the call of the Chancery Division and shall be given priority over all other causes. The Court shall set the cause for hearing within five (5) days after the defendant has answered, or if the defendant has not answered, the Court shall set the cause for hearing within five (5) days after the last day allowed for the filing of the answer.

Dated this 26th day of May A.D., 1965. This order shall be spread upon the records of this Court and published.

ENTER:

JOHN S. BOYLE,
Chief Judge, Circuit Court of Cook County.